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ALEXANDER L. STEVAS
CLERK

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No. 83-2126

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

THE STATE OF OKLAHOMA
Petitioner,
v.
TIMOTHY R. CASTLEBERRY
and
NICHOLAS RAINERI
Respondents.

ON WRIT OF CERTIORARI TO THE
OKLAHOMA COURT OF CRIMINAL APPEALS

JOINT APPENDIX

DAVID W. LEE
ASSISTANT ATTORNEY GENERAL
CHIEF, CRIMINAL AND FEDERAL DIVISIONS
112 State Capitol Building
Oklahoma City, Oklahoma 73105
(405) 521-3921
COUNSEL FOR PETITIONER

CHARLES FOSTER COX
Attorney at Law
500 N.W. 13th Street
Oklahoma City, OK 73103
(405) 235-7507
COUNSEL FOR RESPONDENTS

PETITION FOR CERTIORARI
FILED JUNE 11, 1984
CERTIORARI GRANTED NOVEMBER 5, 1984

4382

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DISTRICT COURT FOR
OKLAHOMA COUNTY, OKLAHOMA

RELEVANT DOCKET ENTRIES

CRF-81-2676

State of Oklahoma v.
Timothy R. Castleberry

<u>Date</u>	<u>Description</u>
6-10-81	Information Filed
6-11-81	Arraignment. The Defendant appears in person and with his attorney, Charles Cox. Bond is set at \$2,000.00.
7-1-81	Preliminary hearing. Defendant Castleberry represented by Charles Cox is bound over for trial.
7-2-81	Defendant Castleberry formally arraigned. Defendant appears represented by Charles Cox.
8-18-81	Motion to Suppress filed on behalf of Defendant.
9-23 & 24-81	Jury trial for Defendant Castleberry. Defendant is represented at trial by Charles Cox. Defendant Castleberry is found guilty of the lesser included offense of Possession of Cocaine and the jury set his punishment at imprisonment for a term of eight (8) years.
10-16-81	Defendant Castleberry is formally sentenced as set forth above.
11-3-81	Notice of Appeal filed on behalf on Defendant Castleberry.

DISTRICT COURT FOR
OKLAHOMA COUNTY, OKLAHOMA

RELEVANT DOCKET ENTRIES

CRF-81-2678

State of Oklahoma v. Nicholas Raineri
and Timothy R. Castleberry

<u>Date</u>	<u>Description</u>
6-10-81	Information Filed
6-11-81	Arraignment. The Defendants Castleberry and Raineri appear in person and with their attorney, Charles Cox. Bond is set at \$4,000 for both.
7-1-81	Preliminary hearing. Defendants Castleberry and Raineri represented by Charles Cox and both bound over for trial.
7-2-81	Defendants Castleberry and Raineri formally arraigned. Defendants appear represented by Charles Cox.
8-18-81	Motion to Suppress filed on behalf of Defendants Castleberry and Raineri.
9-1 & 2-81	Jury trial for Defendants Castleberry and Raineri. Defendants are represented at trial by Charles Cox. Defendant Castleberry is found guilty of the offense of Possession of Methaqualone With Intent to Distribute in Count I and the jury set his punishment at imprisonment for a term of ten (10) years with a fine of \$5,000.00; in Count II the Defendant Castleberry is found guilty

of Possession of Marijuana With Intent to Distribute and the jury set his punishment at imprisonment for a term of seven (7) years and a fine of \$5000.00. Defendant Raineri is found guilty of the crime of Possession of Metaquaalone With Intent to Distribute in Count I and the jury set his punishment at imprisonment for a term of seven (7) years with a fine of \$5,000.00. In Count II the Defendant Raineri is found guilty of Possession of Marijuana With Intent to Distribute and the jury set punishment at imprisonment for a term of seven (7) years and a fine of \$5000.00.

10-16-81 Defendants Castleberry and Raineri are formally sentenced as set forth above, with each sentence on Count II to run concurrently with Count I and the fines as to Count II are suspended.

11-3-81 Notice of Appeal filed on behalf on Defendants Castleberry and Raineri.

RELEVANT DOCKET ENTRIES IN
THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA
IN F-82-227 AND F-82-228

- 5-13-82 Defendant Castleberry's and Raineri's Motion to Consolidate Appeals in Case Nos. F-82-227 and F-82-228 filed.
- 7-23-83 Order of Court of Criminal Appeals granting Defendants' Motion to Consolidate Appeals.
- 1-23-83 Opinion of the Oklahoma Court of Criminal Appeals in consolidated Case Nos. F-82-227 and F-82-228.
- 2-13-84 State files Petition for Rehearing.
- 4-5-84 Order Denying Rehearing.
- 5-9-84 Order Staying Execution of Mandate.

IN THE DISTRICT COURT WITHIN AND FOR
OKLAHOMA COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA)	
)	
Plaintiff,)	
)	
vs.)	No. CRF-81-2676
)	
TIMOTHY R. CASTLEBERRY)	
)	
Defendant.)	

MOTION TO SUPPRESS

COMES NOW the defendant above named and moves this Court to suppress as evidence against him in this case, all evidence, whether tangible or intangible, obtained as a result of the Defendant's search or arrest for the reason that the search of the Defendant and the arrest of the Defendant was illegal and in violation of the Defendant's rights under the United States Constitution and Statutes and Constitution of the State of Oklahoma.

/s/ Charles F. Cox
 CHARLES F. COX
 500 Northwest 13th Street
 Oklahoma City, Oklahoma
 73103
 Telephone: (405) 235-7507

ATTORNEY FOR DEFENDANT

VERIFICATION

STATE OF OKLAHOMA)
) ss
 COUNTY OF OKLAHOMA)

I, Charles F. Cox, of lawful age and having been duly sworn, depose and state as follows: That I am the attorney for defendant in the above and foregoing Motion to Suppress; that I have read said Motion and am familiar with the contents thereof; that the statements and facts contained in said Motion are true and correct to the best of my information, knowledge and belief.

/s/Charles F. Cox
 Charles F. Cox

Subscribed and sworn to before me this /s/ 22 day of /s/ July, 1981.

/s/ Linda Campbell
 NOTARY PUBLIC

My Commission Expires:

/s/ Aug. 2, 1981

IN THE DISTRICT COURT WITHIN AND FOR
OKLAHOMA COUNTY
STATE OF OKLAHOMA

THE STATE OF OKLAHOMA)	
)	
Plaintiff,)	
)	
vs.)	No. CRF-81-2678
)	
TIMOTHY R. CASTLEBERRY)	
and NICHOLAS RAINERI)	
)	
Defendants.)	

MOTION TO SUPPRESS

COMES NOW the defendants above named and move this Court to suppress as evidence against them in this case, all evidence, whether tangible or intangible, obtained as a result of the Defendants' search or arrest for the reason that the search of the Defendants and the arrest of the Defendants was illegal and in violation of the Defendants' rights under the United States Constitution and Statutes and Constitution of the State of Oklahoma.

/s/ Charles F. Cox
CHARLES F. COX
500 Northwest 13th Street
Oklahoma City, Oklahoma
73103
Telephone: (405) 235-7507

ATTORNEY FOR DEFENDANT

VERIFICATION

STATE OF OKLAHOMA)
) ss
COUNTY OF OKLAHOMA)

I, Charles F. Cox, of lawful age and having been duly sworn, depose and state as follows: That I am the attorney for defendant in the above and foregoing Motion to Suppress; that I have read said Motion and am familiar with the contents thereof; that the statements and facts contained in said Motion are true and correct to the best of my information, knowledge and belief.

/s/Charles F. Cox
Charles F. Cox

Subscribed and sworn to before me
this /s/ 22 day of /s/ July, 1981.

/s/ Linda Campbell
NOTARY PUBLIC

My Commission Expires:

/s/ Aug. 2, 1981

THE STATE OF OKLAHOMA)
)
 OKLAHOMA COUNTY) SS.

IN THE DISTRICT COURT OF THE
 SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF OKLAHOMA, SITTING IN AND FOR
 OKLAHOMA COUNTY, OKLAHOMA

THE STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 -vs-) No. CRF-81-2676
)
 TIMOTHY R. CASTLEBERRY,)
)
 Defendant.)

JUDGMENT AND SENTENCE ON CONVICTION

Now, on this 16th day of October, 1981, the same being a juridical day of said court, and the time duly appointed for judgment in the above-entitled cause, and said cause coming on for judgment, and the defendant TIMOTHY R. CASTLEBERRY being personally present in open court, and being duly represented at all appearances before the court by his attorney of record, CHARLES FOSTER COX, and having been legally charged with the offense of POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE WITH INTENT TO DISTRIBUTE, TO-WIT: COCAINE, and having been duly informed of the nature of the charge and having been duly arraigned thereon, and having duly and properly pleaded not guilty to said offense after having been duly advised of

his rights; and having been duly and legally tried and convicted of the crime of TO THE INCLUDED OFFENSE OF POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE, TO-WIT: COCAINE, and the defendant having been asked by the court whether he has any legal cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause why judgment and sentence should not be pronounced against the defendant, and none appearing to the court, it is the judgment of the court that said defendant is guilty of the crime of TO THE INCLUDED OFFENSE OF POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE, TO-WIT: COCAINE

It is Therefore, Ordered, Adjudged and Decreed by the Court that TIMOTHY R. CASTLEBERRY is sentenced to a term of EIGHT (8) years under the direction and control of the Department of Corrections of the State of Oklahoma; and said defendant is committed to the said Department of Corrections at the Oklahoma State Penitentiary at McAlester, Oklahoma, pursuant to the Oklahoma Corrections Act of 1967 and pursuant to the rules of said Department, for the crime of TO THE INCLUDED OFFENSE OF POSSESSION OF A CONTROLLED DANGEROUS SUBSTANCE, TO-WIT: COCAINE; said term of sentence to begin at and from the delivery of the defendant to the Warden of the State Penitentiary at McAlester, Oklahoma; and that said defendant pay the cost of this prosecution, taxed at \$77.00, for which judgment is hereby rendered against the defendant; and thereupon the defendant is by the court notified of his right of appeal.

It Is Further Ordered, Adjudged and Decreed by the court that the Sheriff of Oklahoma County, Oklahoma, transport said defendant to the said State Penitentiary at McAlester, Oklahoma, and that the Warden of said penitentiary detain the said defendant according to this judgment, sentence and order, and that the clerk of this court, do immediately certify, under the seal of the court, and deliver to the Sheriff of Oklahoma County, Oklahoma, two copies of this judgment, sentence and order, one of the copies to accompany the body of the said defendant to said penitentiary at McAlester, Oklahoma, and to be left therewith at the said penitentiary, said copy to be warrant and authority for the imprisonment of the said defendant and the other copy to be warrant and authority of said Sheriff of Oklahoma County, Oklahoma, for the transportation and imprisonment of the said defendant as hereinbefore provided. Said last named copy to be returned to the Clerk of said Court with the proceedings thereunder endorsed thereon. (Seal)

/s/ Homer Smith
HOMER SMITH,
District Judge

Attest:

DAN GRAY,
Court Clerk

By /s/ Kim Williams, Deputy Court Clerk

THE STATE OF OKLAHOMA)
)
 OKLAHOMA COUNTY) SS.

IN THE DISTRICT COURT OF THE
 SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF OKLAHOMA, SITTING IN AND FOR
 OKLAHOMA COUNTY, OKLAHOMA.

THE STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 -vs-) No. CRF-81-2678
)
 TIMOTHY R. CASTLEBERRY,)
)
 Defendant.)

JUDGMENT AND SENTENCE ON CONVICTION

Now, on this 16th day of October, 1981, the same being a juridical day of said court, and the time duly appointed for judgment in the above-entitled cause, and said cause coming on for judgment, and the defendant TIMOTHY R. CASTLEBERRY being personally present in open court, and being duly represented at all appearances before the court by his attorney of record, CHARLES F. COX, and having been legally charged with the offense of COUNT 1: POSSESSION OF METHAQUAALONE WITH INTENT TO DISTRIBUTE, and having been duly informed of the nature of the charge and having been duly arraigned thereon, and having duly and properly pleaded not guilty to said offense after having been duly advised of his rights; and having been duly and legally tried and convicted

of the crime of COUNT 1: POSSESSION OF METHAQUAALONE WITH INTENT TO DISTRIBUTE and the defendant having been asked by the court whether he has any legal cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause why judgment and sentence should not be pronounced against the defendant, and none appearing to the court, it is the judgment of the court that said defendant is guilty of the crime of COUNT 1: POSSESSION OF METHAQUAALONE WITH INTENT TO DISTRIBUTE

It is Therefore, Ordered, Adjudged and Decreed by the Court that TIMOTHY R. CASTLEBERRY is sentenced to a term of TEN (10) years under the direction and control of the Department of Corrections of the State of Oklahoma; and said defendant is committed to the said Department of Corrections at the Oklahoma State Penitentiary at McAlester, Oklahoma, pursuant to the Oklahoma Corrections Act of 1967 and pursuant to the rules of said Department, for the crime of COUNT 1: POSSESSION OF METHAQUAALONE WITH INTENT TO DISTRIBUTE; said term of sentence to begin at and from the delivery of the defendant to the Warden of the State Penitentiary at McAlester, Oklahoma; and that said defendant pay the cost of this prosecution, taxed at \$45.76, for which judgment is hereby rendered against the defendant; and there-upon the defendant is by the court notified of his right of appeal.

It Is Further Ordered, Adjudged and Decreed by the court that the Sheriff of Oklahoma County, Oklahoma, transport said defendant to the said State Penitentiary at McAlester, Oklahoma, and that the Warden of said penitentiary detain the said defendant according to this judgment, sentence and order, and that the clerk of this court, do immediately certify, under the seal of the court, and deliver to the Sheriff of Oklahoma County, Oklahoma, two copies of this judgment, sentence and order, one of the copies to accompany the body of the said defendant to said penitentiary at McAlester, Oklahoma, and to be left therewith at the said penitentiary, said copy to be warrant and authority for the imprisonment of the said defendant and the other copy to be warrant and authority of said Sheriff of Oklahoma County, Oklahoma, for the transportation and imprisonment of the said defendant as hereinbefore provided. Said last named copy to be returned to the Clerk of said Court with the proceedings thereunder endorsed thereon. (Seal)

(DEFENDANT TO PAY A FINE OF \$5,000.00)

/s/ CHARLES L. OWENS
CHARLES L. OWENS, District Judge

Attest:

DAN GRAY,
Court Clerk

By /s/ Mary Evelyn Moncrief, Deputy Court Clerk

THE STATE OF OKLAHOMA)
)
OKLAHOMA COUNTY) SS.

IN THE DISTRICT COURT OF THE
SEVENTH JUDICIAL DISTRICT OF THE
STATE OF OKLAHOMA, SITTING IN AND FOR
OKLAHOMA COUNTY, OKLAHOMA.

THE STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
-vs-) No. CRF-81-2678
)
TIMOTHY R. CASTLEBERRY,)
)
 Defendant.)

JUDGMENT AND SENTENCE ON CONVICTION

Now, on this 16th day of October, 1981, the same being a juridical day of said court, and the time duly appointed for judgment in the above-entitled cause, and said cause coming on for judgment, and the defendant TIMOTHY R. CASTLEBERRY being personally present in open court, and being duly represented at all appearances before the court by his attorney of record, CHARLES F. COX, and having been legally charged with the offense of COUNT 2: POSSESSION OF MARIHUANA WITH INTENT TO DISTRIBUTE, and having been duly informed of the nature of the charge and having been duly arraigned thereon, and having duly and properly pleaded not guilty to said offense after having been duly advised of his rights; and having been duly

and legally tried and convicted of the crime of COUNT 2: POSSESSION OF MARIHUANA WITH INTENT TO DISTRIBUTE and the defendant having been asked by the court whether he has any legal cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause why judgment and sentence should not be pronounced against the defendant, and none appearing to the court, it is the judgment of the court that said defendant is guilty of the crime of COUNT 2: POSSESSION OF MARIHUANA WITH INTENT TO DISTRIBUTE

It is Therefore, Ordered, Adjudged and Decreed by the Court that TIMOTHY R. CASTLEBERRY is sentenced to a term of SEVEN (7) years under the direction and control of the Department of Corrections of the State of Oklahoma; and said defendant is committed to the said Department of Corrections at the Oklahoma State Penitentiary at McAlester, Oklahoma, pursuant to the Oklahoma Corrections Act of 1967 and pursuant to the rules of said Department, for the crime of COUNT 2: POSSESSION OF MARIHUANA WITH INTENT TO DISTRIBUTE; said term of sentence to begin at and from the delivery of the defendant to the Warden of the State Penitentiary at McAlester, Oklahoma; and that said defendant pay the cost of this prosecution, taxed at \$45.75, for which judgment is hereby rendered against the defendant; and thereupon the defendant is by the court notified of his right of appeal.

It Is Further Ordered, Adjudged and Decreed by the court that the Sheriff of Oklahoma County, Oklahoma, transport said defendant to the said State Penitentiary at McAlester, Oklahoma, and that the Warden of said penitentiary detain the said defendant according to this judgment, sentence and order, and that the clerk of this court, do immediately certify, under the seal of the court, and deliver to the Sheriff of Oklahoma County, Oklahoma, two copies of this judgment, sentence and order, one of the copies to accompany the body of the said defendant to said penitentiary at McAlester, Oklahoma, and to be left therewith at the said penitentiary, said copy to be warrant and authority for the imprisonment of the said defendant and the other copy to be warrant and authority of said Sheriff of Oklahoma County, Oklahoma, for the transportation and imprisonment of the said defendant as hereinbefore provided. Said last named copy to be returned to the Clerk of said Court with the proceedings thereunder endorsed thereon. (Seal) (THIS COUNT 2 TO RUN CONCURRENTLY WITH COUNT 1)

/s/ CHARLES L. OWENS
CHARLES L. OWENS, District Judge

Attest:

DAN GRAY,
Court Clerk

By /s/ Mary Evelyn Moncrief, Deputy Court Clerk

THE STATE OF OKLAHOMA)
) SS.
OKLAHOMA COUNTY)

IN THE DISTRICT COURT OF THE
SEVENTH JUDICIAL DISTRICT OF THE
STATE OF OKLAHOMA, SITTING IN AND FOR
OKLAHOMA COUNTY, OKLAHOMA.

THE STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
-vs-) No. CRF-81-2678
)
NICHOLAS RAINERI,)
)
 Defendant.)

JUDGMENT AND SENTENCE ON CONVICTION

Now, on this 16th day of October, 1981, the same being a juridical day of said court, and the time duly appointed for judgment in the above-entitled cause, and said cause coming on for judgment, and the defendant NICHOLAS RAINERI being personally present in open court, and being duly represented at all appearances before the court by his attorney of record, CHARLES F. COX, and having been legally charged with the offense of COUNT 1: POSSESSION OF METHAQUAALONE WITH INTENT TO DISTRIBUTE, and having been duly informed of the nature of the charge and having been duly arraigned thereon, and having duly and properly pleaded not guilty to said offense after having been duly advised of his rights; and having been duly and legally tried and convicted of the

crime of COUNT 1: POSSESSION OF METH-AQUAALONE WITH INTENT TO DISTRIBUTE and the defendant having been asked by the court whether he has any legal cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause why judgment and sentence should not be pronounced against the defendant, and none appearing to the court, it is the judgment of the court that said defendant is guilty of the crime of COUNT 1: POSSESSION OF METHAQUAALONE WITH INTENT TO DISTRIBUTE

It is Therefore, Ordered, Adjudged and Decreed by the Court that NICHOLAS RAINERI is sentenced to a term of nine (9) years under the direction and control of the Department of Corrections of the State of Oklahoma; and said defendant is committed to the said Department of Corrections at the Oklahoma State Penitentiary at McAlester, Oklahoma, pursuant to the Oklahoma Corrections Act of 1967 and pursuant to the rules of said Department, for the crime of COUNT 1: POSSESSION OF METHAQUAALONE WITH INTENT TO DISTRIBUTE; said term of sentence to begin at and from the delivery of the defendant to the Warden of the State Penitentiary at McAlester, Oklahoma; and that said defendant pay the cost of this prosecution, taxed at \$45.76, for which judgment is hereby rendered against the defendant; and thereupon the defendant is by the court notified of his right of appeal.

It Is Further Ordered, Adjudged and Decreed by the court that the Sheriff of Oklahoma County, Oklahoma, transport said defendant to the said State Penitentiary at McAlester, Oklahoma, and that the Warden of said penitentiary detain the said defendant according to this judgment, sentence and order, and that the clerk of this court, do immediately certify, under the seal of the court, and deliver to the Sheriff of Oklahoma County, Oklahoma, two copies of this judgment, sentence and order, one of the copies to accompany the body of the said defendant to said penitentiary at McAlester, Oklahoma, and to be left therewith at the said penitentiary, said copy to be warrant and authority for the imprisonment of the said defendant and the other copy to be warrant and authority of said Sheriff of Oklahoma County, Oklahoma, for the transportation and imprisonment of the said defendant as hereinbefore provided. Said last named copy to be returned to the Clerk of said Court with the proceedings thereunder endorsed thereon. (Seal)

(DEFENDANT TO PAY A FINE OF \$5,000.00)

/s/ CHARLES L. OWENS

CHARLES L. OWENS, District Judge

Attest:

DAN GRAY,

Court Clerk

By /s/ Mary Evelyn Moncrief, Deputy Court Clerk

THE STATE OF OKLAHOMA)
)
 OKLAHOMA COUNTY) SS.

IN THE DISTRICT COURT OF THE
 SEVENTH JUDICIAL DISTRICT OF THE
 STATE OF OKLAHOMA, SITTING IN AND FOR
 OKLAHOMA COUNTY, OKLAHOMA.

THE STATE OF OKLAHOMA,)
)
 Plaintiff,)
)
 -vs-) No. CRF-81-2678
)
 NICHOLAS RAINERI,)
)
 Defendant.)

JUDGMENT AND SENTENCE ON CONVICTION

Now, on this 16th day of October, 1981, the same being a juridical day of said court, and the time duly appointed for judgment in the above-entitled cause, and said cause coming on for judgment, and the defendant NICHOLAS RAINERI being personally present in open court, and being duly represented at all appearances before the court by his attorney of record, CHARLES F. COX, and having been legally charged with the offense of COUNT 2: POSSESSION OF MARIHUANA WITH INTENT TO DISTRIBUTE, and having been duly informed of the nature of the charge and having been duly arraigned thereon, and having duly and properly pleaded not guilty to said offense after having been duly advised of his rights; and having been duly and legally tried and convicted of the

crime of COUNT 2: POSSESSION OF MARIHUANA WITH INTENT TO DISTRIBUTE and the defendant having been asked by the court whether he has any legal cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause to show why judgment and sentence should not be pronounced against him, and he stating no sufficient cause why judgment and sentence should not be pronounced against the defendant, and none appearing to the court, it is the judgment of the court that said defendant is guilty of the crime of COUNT 2: POSSESSION OF MARIHUANA WITH INTENT TO DISTRIBUTE

It is Therefore, Ordered, Adjudged and Decreed by the Court that NICHOLAS RAINERI is sentenced to a term of SEVEN (7) years under the direction and control of the Department of Corrections of the State of Oklahoma; and said defendant is committed to the said Department of Corrections at the Oklahoma State Penitentiary at McAlester, Oklahoma, pursuant to the Oklahoma Corrections Act of 1967 and pursuant to the rules of said Department, for the crime of COUNT 2: POSSESSION OF MARIHUANA WITH INTENT TO DISTRIBUTE; said term of sentence to begin at and from the delivery of the defendant to the Warden of the State Penitentiary at McAlester, Oklahoma; and that said defendant pay the cost of this prosecution, taxed at \$45.75, for which judgment is hereby rendered against the defendant; and thereupon the defendant is by the court notified of his right of appeal.

It Is Further Ordered, Adjudged and Decreed by the court that the Sheriff of Oklahoma County, Oklahoma, transport said defendant to the said State Penitentiary at McAlester, Oklahoma, and that the Warden of said penitentiary detain the said defendant according to this judgment, sentence and order, and that the clerk of this court, do immediately certify, under the seal of the court, and deliver to the Sheriff of Oklahoma County, Oklahoma, two copies of this judgment, sentence and order, one of the copies to accompany the body of the said defendant to said penitentiary at McAlester, Oklahoma, and to be left therewith at the said penitentiary, said copy to be warrant and authority for the imprisonment of the said defendant and the other copy to be warrant and authority of said Sheriff of Oklahoma County, Oklahoma, for the transportation and imprisonment of the said defendant as hereinbefore provided. Said last named copy to be returned to the Clerk of said Court with the proceedings thereunder endorsed thereon. (Seal) (THIS COUNT 2 TO RUN CONCURRENTLY WITH COUNT 1)

/s/ CHARLES L. OWENS
CHARLES L. OWENS, District Judge

Attest:

DAN GRAY,
Court Clerk

By /s/ Mary Evelyn Moncrief , Deputy Court Clerk

IN THE COURT OF CRIMINAL APPEALS
OF THE STATE OF OKLAHOMA

No. F-82-227

No. F-82-228

TOMOTHY R. CASTLEBERRY

and

NICHOLAS RAINERI

Appellants,

v.

THE STATE OF OKLAHOMA,

Appellee.

[Filed January 23, 1984]

OPINION

BRETT, Judge:

Timothy R. Castleberry and Nicholas Raineri, appellants, were charged with two (2) counts each of Possession of a Controlled Dangerous Substance with Intent to Distribute in the District Court of Oklahoma County, Case No. CRF-81-2678. The jury found the appellants guilty on both counts, and assessed punishment for

Raineri at nine (9) years' imprisonment and a fine of five thousand dollars (\$5,000) for Count 1 and seven (7) years' imprisonment plus a five thousand dollar (\$5,000) fine for Count 2; and, for Castleberry, ten (10) years' imprisonment plus a fine of five thousand dollars (\$5,000) for Count 1 and seven (7) years' imprisonment plus a five thousand dollar (\$5,000) fine for Count 2. The trial court sentenced the appellants accordingly, additionally ordering the sentences to run concurrently and suspending the fine for Count 2 as to both appellants.

Appellant Castleberry was separately convicted of Possession of a Controlled Dangerous Substance, Cocaine, in Case No. CRF-82-2676 in the Oklahoma County District Court. The trial court sentenced him to eight (8) years' imprisonment. The appeals from the judgments

and sentences are consolidated since the same factual circumstances are involved in each case.

At approximately noontime on June 9, 1981, Oklahoma City Police Officer R.D. Taylor received a telephone call from a previously unknown confidential informant who told him that two men, one named Castleberry, were staying in Room 113 of a motel in Oklahoma City, driving a blue Thunderbird with Florida license plates and carrying various narcotics in blue suitcases. The informant also gave physical descriptions of the men to the officer.

Officer Taylor proceeded immediately to the location, observed a vehicle matching the informant's description in front of the specified room, and discovered, from the motel clerk, that a man named Castleberry was registered in

that room. He then returned to his car, positioned some five parking spaces from the other vehicle, and waited for back-up assistance to arrive. After several minutes, Officer Taylor observed the appellants emerge from the room and put several suitcases that matched the informant's description into the trunk of the car. At this point, Officer Taylor announced himself as a police officer, approached the car with his badge in one hand and his weapon in the other, and told the appellants to place their hands on the car. Raineri did as ordered, but Castleberry hastily closed the trunk lid and threw a small white object into the car. During a struggle which ensued between Officer Taylor and Castleberry, Castleberry reached up, locked the car door and shut it.

At this point, Officer Citty arrived and opened the trunk of the car with keys Officer Taylor had removed from the door of the car. The officers opened the suitcases, found narcotics and placed the appellants under arrest. Officer Citty then searched the interior of the car and discovered a white Band-Aid box which contained a substance later determined to be cocaine.

Appellants' sole assignment of error is that the trial court erred in overruling their motion to suppress, thereby admitting evidence obtained as a result of an unlawful arrest, search and seizure. The Fourth Amendment of our federal constitution prohibits unreasonable searches and seizures. Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment,

subject only to a few specifically established and well-delineated exceptions. Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).

The exceptions are jealously and carefully drawn, and there must be a showing by those who seek exemption that the exigencies [sic] of the situation made that course imperative. Coolidge v. New Hampshire, 403 U.S. 443, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). Thus, it is incumbent on the State to show why the warrantless search of the car and its contents was permissible in the case at bar.

The State first contends that the search was lawful as incident to a lawful arrest. Appellants challenge both the legality of the arrest and the scope of the search.

Although Officer Taylor testified that he did not arrest the appellants un-

til after the suitcases were opened, the appellants were not free to move after the officer advanced toward them with revolver drawn and ordered them to place their hands on the car. This Court has held that when an officer restrains the individual's freedom of movement, that person is under arrest. Wallace v. State, 620 P.2d 410 (Okl.Cr. 1980), Castellano v. State, 585 P.2d 361 (Okl.Cr. 1978). Under the circumstances, the appellants in the present case were under arrest from the moment Officer Taylor approached them and announced his identity.

Appellants submit that the arrest was unlawful because Officer Taylor did not at that time have probable cause to make it. The Oklahoma statutes allow a warrantless arrest if the officer has reasonable cause to believe a felony has been committed by the person arrested. 22 O.S.1981, § 196.

If at the time of arrest the facts and circumstances within the arresting officer's knowledge and of which he had reasonably trustworthy information were sufficient to warrant a prudent man in believing that an offense had been or was being committed, probable cause is established and the arrest is lawful. Beck v. Ohio, 379 U.S. 89, 85 S.Ct. 223, 13 L.Ed. 2d 142 (1964), Greene v. State, 508 P.2d 1095 (Okla. Cr. 1973).

In this case, appellants argue that the officer had no basis for judging his informant to be reliable or the information trustworthy. We disagree. In Grimes v. State, 528 P.2d 1397 (Okla. Cr. 1974), this Court stated that an informant's trustworthiness could be established if independent facts within the officer's knowledge corroborated the information. Here, the information was

sufficiently corroborated as the only detail not confirmed before the arrest was the presence of narcotics in the suitcases, an allegation Officer Taylor could not lawfully verify before the arrest under the given circumstances.

The search made subsequent to the arrest, however, cannot be justified as a search incident to a lawful arrest, for it far exceeded the permissible bounds of such a search, that is, the area within the arrestee's immediate control from which he might gain possession of a weapon or destructible evidence. See Chimel v. California, 395 U.S. 752, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). Both appellants were restrained--one was handcuffed, the other was on the ground with an officer pointing a gun at him--at the time of the search. The car doors and trunk were locked, so once the officer gained posses-

sion of the keys, there was no danger of appellants' procuring a weapon or destroying evidence from the interior of the car. A search incident to the arrest would therefore justify neither a search of the locked car nor a search of the suitcases therein.

The State's only other justification offered is that the warrantless search was lawful because the officers had probable cause to believe that narcotics were in the suitcases and exigent circumstances required prompt action. The so-called automobile exception on which the State relies was first recognized in Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925). Cases subsequent to Carroll caused some confusion about when containers in cars may be searched, but the Supreme Court clarified the law in

United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982).

If the officer has probable cause to believe there is contraband somewhere in the car, but he does not know exactly where, he may search the entire car as well as any containers found therein. See United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970); Carroll v. United States, 267 U.S. 132, 45 S.Ct. 280, 69 L.Ed. 543 (1925). If, on the other hand, the officer only has probable cause to believe there is contraband in a specific container in the car, he must detain the container and delay his search until a search warrant is obtained. See United States v. Ross, 456 U.S. 798, 102 S.Ct. 2157, 72 L.Ed.2d 572 (1982); Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586, 61

L.Ed.2d 235 (1979); United States v. Chadwick, 433 U.S. 1, 97 S.Ct. 2476, 53 L.Ed.2d 538 (1977).

The Ross court adopted Chief Justice Burger's distinction set out in his concurring opinion to Arkansas v. Sanders, 442 U.S. 753, 99 S.Ct. 2586, 61 L.Ed.2d 235 (1979), wherein he explained that:

[I]t was the luggage being transported by respondent at the time of the arrest, not the automobile in which it was being carried, that was the suspected locus of the contraband. The relationship between the automobile and the contraband was purely coincidental, as in Chadwick. The fact that the suitcase was resting in the trunk of the automobile at the time of respondent's arrest does not turn this into an 'automobile' exception case. The Court need say no more. (Citations omitted). Id., at 766-767, 99 S.Ct. at 2594.

United States v. Ross, 456 U.S. at 813, 102 S.Ct. at 2166-67, 72 L.Ed.2d at 586-87.

The case at bar clearly falls within the Chadwick - Sanders line of cases. The

suspected locations of the contraband were the suitcases and the Band-Aid box which Castleberry threw into the car. Accordingly, we hold that the motion to suppress was erroneously overruled. The officers should have detained the containers until a search warrant had been obtained.

We are not dealing with formalities. The presence of a search warrant serves a high function. Absent some grave emergency, the Fourth Amendment has interposed a magistrate between the citizen and the police. This was done not to shield criminals nor to make the home a safe haven for illegal activities. It was done so that an objective mind might weigh the need to invade that privacy in order to enforce the law. The right of privacy was deemed too precious to entrust to the discretion of those whose job is the detection of crime and the arrest of criminals. Power is a heady thing; and history shows that the police acting on their own cannot be trusted. And so the Constitution requires a magistrate to pass on the desires of the police before they violate the privacy of the home. We cannot be true to that constitutional requirement and excuse the absence of a search warrant without a showing by those

who seek exemption from the constitutional mandate that the exigencies of the situation made that course imperative.

McDonald v. United States, 335 U.S. 451, 445-456, 69 S.Ct. 191, 193, 93 L.Ed. 153 (1948).

For the reasons herein stated, the judgments and sentences appealed from should be, and the same are hereby, REVERSED.

CORNISH, J., specially concurs.

BUSSEY, P.J., dissents.

CORNISH, Judge, specially concurring.

I fully concur in Judge Brett's analysis and application of the Supreme Court's precedents in this case. I would simply note that it has been settled in this State for several years that probable cause will not support a warrantless search in the absence of an emergency, i.e., "exigent circumstances":

[I]t is without question that the existence of probable cause alone will not satisfy a warrantless search. Chambers v. Maroney, 399 U.S. 42, 90 S.Ct. 1975, 26 L.Ed.2d 419 (1970); Whitehead v. State, 546 P.2d 273 (Okla.Cr.1976). Ordinarily, if an officer has probable cause to make a search, then he should go to a magistrate for a warrant authorizing such a search. Only when there are 'exigent circumstances' in addition to the existence of probable cause may an officer legitimately make a search without a warrant.

Blackburn v. State, 575 P.2d 638, 642 (Okla.Cr. 1978).

Absent probable cause to search the entire car, the officers were only authorized to seize the suspect containers and hold them pending issuance of a search warrant. Although probable cause existed with regard to the containers, no exigent circumstances were shown such as to justify a warrantless search.

IN THE COURT OF CRIMINAL APPEALS OF THE
STATE OF OKLAHOMA

TIMOTHY R. CASTLEBERRY and)	
NICHOLAS RAINERI,)	
)	
Appellants,)	
)	
-vs-)	Case No.
)	F-82-227
THE STATE OF OKLAHOMA,)	F-82-228
)	
Appellee.)	

ORDER DENYING REHEARING

In an opinion dated January 23, 1984, this Court reversed the convictions for drug offenses in Oklahoma County Case Nos. CRF-82-2676 and CRF-82-2678. On February 13, 1984, the State filed a petition requesting this Court to grant a rehearing.

NOW THEREFORE, after considering the petition and reviewing the record, this Court finds that the petition for rehearing should be, and the same is, DENIED. The mandate shall issue forthwith.

WITNESS OUR HANDS AND THE SEAL OF
THIS COURT this /s/ 5th day of /s/ April,
1984.

/s/ Hez. J. Bussey
HEZ. J. BUSSEY, Presiding Judge

/s/ Tom Brett
TOM BRETT, Judge

ATTEST:

/s/ Susan Hampton, Deputy
Clerk